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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BG38

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 36

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 36 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 36 would modify the special management zone (SMZ) procedure in the FMP to allow for the designation of spawning SMZs; modify the FMP framework procedures to allow spawning SMZs to be established or modified through the framework process; establish spawning SMZs off North Carolina, South Carolina, and Florida; establish transit and anchoring provisions in the spawning SMZs; and establish a sunset provision for most of the

spawning SMZs. Amendment 36 would also move the boundary of the existing Charleston Deep Artificial Reef Marine Protected Area (MPA). The purpose of Amendment 36 is to protect spawning snapper-grouper species and their spawning habitat, and to reduce bycatch and bycatch mortality for snapper-grouper species, including speckled hind and warsaw grouper.

DATES: Written comments on Amendment 36 must be received by *[insert date 60 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on Amendment 36 identified by "NOAA-NMFS-2016-0153," by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal at <http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0153, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Frank Helies, NMFS Southeast Regional Office (SERO), 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end

of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of Amendment 36 may be obtained from www.regulations.gov or the SERO Web site at <http://sero.nmfs.noaa.gov>. Amendment 36 includes an environmental assessment, Regulatory Flexibility Act analysis, regulatory impact review, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS SERO, telephone: 727-824-5305, or email: frank.helies@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or

amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMP being revised by Amendment 36 was prepared by the Council and, if approved, would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Council developed Amendment 36 to protect spawning snapper-grouper species and their spawning habitat by prohibiting fishing for or harvest of snapper-grouper species in certain areas year-round in Federal waters of the South Atlantic. Areas designated for protection would include habitat characteristics, bottom topography (hard and live bottom), and currents that provide essential fish habitat important for spawning snapper-grouper species. The Council determined that protecting spawning snapper-grouper and their associated habitats would allow these species to produce more larvae, and may subsequently increase snapper-grouper populations.

The Council also developed Amendment 36 to reduce bycatch and bycatch mortality of snapper-grouper species, including speckled hind and warsaw grouper. The snapper-grouper fishery in the South Atlantic is a highly

regulated, multi-species fishery. Discards in the fishery can occur due to regulations, such as closed seasons, possession or size limits, or from catch and release of these species. For snapper-grouper species prohibited from harvest, such as speckled hind and warsaw grouper, fish discarded due to regulations are considered bycatch. The deep-water snapper-grouper species are further impacted due to high discard mortality rates (low survivability due to barotrauma). The Council concluded that prohibiting the use of certain fishing gear in specified areas where snapper-grouper are known to occur and possibly spawn would reduce encounters with these species and subsequently provide protection for reproduction. Spawning SMZs could provide long-term beneficial biological and socio-economic effects if spawning fish are sufficiently protected.

The Council has identified a total of five areas proposed to be considered as spawning SMZs in the South Atlantic off North Carolina, South Carolina, and Florida. These areas have been identified based on the documented occurrence of snapper-grouper species and analysis of spawning data, recommendations from the Council's MPA Expert Work Group and Snapper-Grouper Advisory Panel, as well as cooperative research and public recommendations.

Amendment 36 also contains a 10-year sunset provision that would apply to most of the proposed spawning SMZs. The sunset provision would allow for most of the spawning SMZs to expire 10 years following the implementation date unless they are renewed. When deciding whether to renew a spawning SMZ, the Council may consider the evidence of spawning by snapper-grouper species in the spawning SMZ and whether a spawning SMZ is being monitored. The Council concluded that a 10-year sunset provision would help to ensure that spawning SMZs are monitored and evaluated during this period to document snapper-grouper spawning within the sites.

The Council developed a system management plan (SMP) for the spawning SMZs proposed in Amendment 36. The SMP describes in detail the monitoring and evaluation requirements for the proposed spawning SMZs. The Council recognizes that monitoring the proposed spawning SMZs by academic, state, or NMFS personnel is necessary to evaluate their effectiveness; therefore, the SMP outlines the potential monitoring partners and their roles.

In addition to the spawning SMZs proposed for a similar purpose through Amendment 36, the Council originally designated the Charleston Deep Artificial Reef MPA, located off South Carolina, in Amendment 14 to the

Snapper-Grouper FMP (74 FR 1621, January 13, 2009) to add protected snapper-grouper habitat and contribute to adding fish biomass. Recently, the State of South Carolina worked with the U.S. Army Corps of Engineers to modify the boundary of this site to include additional substrate material that was sunk by the state in the area of this MPA. The State of South Carolina requested the Council shift the boundary of the existing Charleston Deep Artificial Reef MPA to match the new boundary of the artificial reef site. Amendment 36 would align the Charleston Deep Artificial Reef MPA boundary with the site permitted by the U.S. Army Corps of Engineers, while retaining the size of the current MPA. Amendment 36 would move the existing boundary around the Charleston Deep Artificial Reef MPA 1.4 mi (2.3 km) to the northwest.

Actions Contained in Amendment 36

Amendment 36 includes actions to modify the SMZ procedure in the FMP to allow for the designation of spawning SMZs; modify the FMP framework procedures to allow spawning SMZs to be established or modified through the framework process; and establish spawning SMZs off North Carolina, South Carolina, and Florida. Additional actions in Amendment 36 would establish transit and anchoring provisions in the spawning SMZs, and establish a sunset

provision for most of the spawning SMZs. The amendment would also move the existing Charleston Deep Artificial Reef MPA 1.4 mi (2.3 km) northwest to match the permitted site boundary.

Modify the SMZ Procedures in the FMP to Allow Designation of Spawning SMZs

The existing SMZ procedure in the FMP addresses the use of certain gear in areas including artificial reefs, fish attraction devices, and other modified areas of habitat for fishing. Possession limits can also be regulated in SMZs. Amendment 36 would allow the Council to designate important spawning areas as spawning SMZs to provide additional protection to some existing Essential Fish Habitat-Habitat Areas of Particular Concern for snapper-grouper species. The Council concluded that designating areas as spawning SMZs is important to protect snapper-grouper species and habitat where these species spawn. Furthermore, the Council concluded that the spawning SMZs in Amendment 36 would enhance reproduction for snapper-grouper species and thus increase the number of larvae that are produced by the species.

Modify the FMP Framework Procedures for Spawning SMZs

Amending the FMP can require more detailed analyses and requires a lengthier prescribed timeline prior to

implementation. However, the current FMP contains framework procedures to allow the Council to modify certain management measures, such as annual catch limits and other management measures, via an expedited process (see 50 CFR 622.194; 56 FR 56016, October 31, 1991). Currently, SMZs cannot be modified under the framework process, so any changes to SMZs are required to be done through an FMP amendment. In Amendment 36, the Council has decided to include changes to spawning SMZs, such as boundary modifications and the establishment or removal of spawning SMZs, under the framework process. For example, this proposed action would allow the Council to remove a spawning SMZ if monitoring efforts do not document evidence of spawning snapper-grouper species within the boundary. The proposed revisions to the FMP framework procedures would also allow the Council to remove the proposed 10-year sunset provision for a proposed spawning SMZ if monitoring efforts document snapper-grouper species' spawning inside a spawning SMZ. The Council has decided that changing spawning SMZs through an expedited process can have beneficial biological and socio-economic impacts, especially if the changes respond to newer information, such as spawning locations for snapper-grouper species. The Council has concluded that the framework process will allow

adequate time for the public to comment on any proposed change related to a spawning SMZ.

Establish Spawning SMZs off North Carolina, South Carolina, and Florida

The existing South Atlantic SMZs restrict the use of certain fishing gear in areas including artificial reefs, fish attraction devices, and other modified areas of habitat for fishing (50 CFR 622.182). Possession limits can also be regulated in SMZs. The original FMP established SMZs for artificial reefs to restrict certain fishing gear in those areas (48 FR 49463, August 31, 1983).

Currently, there are no spawning SMZs for snapper-grouper in the South Atlantic. Amendment 36 proposes to establish five snapper-grouper spawning SMZs in the South Atlantic off North Carolina, South Carolina, and Florida.

Fishing for or harvest of snapper-grouper species within the proposed spawning SMZs would be prohibited year-round. Certain other activities in the spawning SMZs would be restricted, including transiting with snapper-grouper species on board and anchoring.

Another purpose of spawning SMZs is to reduce bycatch and bycatch mortality of snapper-grouper species, including speckled hind and warsaw grouper. Currently, retention of speckled hind and warsaw grouper is prohibited in Federal

waters in the South Atlantic. Prohibiting the targeting or harvest of snapper-grouper species in specified areas where these species are known to occur and possibly spawn would reduce encounters with these deep-water species and provide protection for reproduction. The Council concluded that protecting snapper-grouper species within the spawning SMZs could enhance the opportunity for these species to reproduce and provide more larvae into the environment. Spawning SMZs would also allow opportunities to monitor population changes in snapper-grouper species and further refine protection of spawning habitat.

Establish Transit and Anchoring Provisions in Spawning SMZs

Amendment 36 would allow vessels to transit through the proposed spawning SMZs with snapper-grouper species on board when fishing gear is properly stowed. "Properly stowed" means that trawl or try nets and the attached doors must be out of the water, but would not be required to be on deck or secured below deck. Terminal gear (hook, leader, sinker, flasher, or bait) used with automatic reels, bandit gear, buoy gear, handline, or rod and reel would have to be disconnected and stowed separately from such fishing gear and sinkers would have to be disconnected from down riggers and stowed separately. Vessels in the spawning SMZs would be prohibited from fishing for, harvest, or possession of

snapper-grouper species year-round in these areas. Except for the experimental artificial reefs Area 51 and Area 53 off South Carolina proposed as spawning SMZs, persons on board a vessel would not be allowed to anchor, use an anchor or chain, or use a grapple and chain while in spawning SMZs. Fishermen would continue to be allowed to troll for pelagic species such as dolphin, tuna, and billfish in spawning SMZs.

Establish a Sunset Provision for the Spawning SMZs

Amendment 36 would establish a 10-year sunset provision for the establishment of the proposed spawning SMZs, except for the Area 51 and Area 53 Spawning SMZs, which will remain in effect indefinitely. Thus, except for the latter two areas, the proposed spawning SMZs and their associated management measures would be effective for 10 years following the implementation of a final rule for Amendment 36. For the proposed spawning SMZs and management measures subject to the sunset provision to extend beyond 10 years, the Council would need to evaluate the effectiveness of the spawning SMZs for conserving and protecting spawning snapper-grouper species, and subsequently take further action. The Council will regularly evaluate all of the spawning SMZs over the 10-year period. They concluded that this period was an appropriate

timeframe to monitor the sites and determine whether a sufficient level of spawning by snapper-grouper species occurs to justify continued protection as spawning SMZs.

Move the Existing Charleston Deep Artificial Reef MPA

Amendment 36 would move the existing Charleston Deep Artificial Reef MPA 1.4 mi (2.3 km) northwest to match the boundary of the U.S. Army Corps of Engineers' permitted artificial reef area at that location. The size of the MPA would remain the same. The Council originally designated the current area as an artificial reef site in Amendment 14. The State of South Carolina has worked with the U.S. Army Corps of Engineers to modify the boundary of this site to include material recently sunk by the state in the area and has requested the Council shift their boundary of the existing Charleston Deep Artificial Reef MPA to match the new boundary of the U.S. Army Corps of Engineers' permitted artificial reef area.

A proposed rule that would implement measures outlined in Amendment 36 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish a proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 36 for Secretarial review, approval, and implementation. Comments on Amendment 36 must be received by *[insert date 60 days after date of publication in the FEDERAL REGISTER]*. Comments received during the respective comment periods, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 36. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 29, 2016

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.